DRN-4148077

The complaint

Mr C complains about the advice given by Punter Southall Wealth Limited ('PSW') to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr C held benefits in the BSPS having previously worked for the sponsoring employer. In March 2016, Mr C's former employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's former employer would be set up – the BSPS2.

Mr C contacted PSW in August 2017 to discuss his pension. PSW's notes indicate he was referred by a friend.

PSW completed a fact-find to gather information about Mr C's circumstances and objectives. Mr C was 47, in good health, married with two dependent children. He and Mrs C were both employed, and their income exceeded their outgoings. They had a mortgage for approximately £46,000 with a remaining term of twelve years. But they were making regular overpayments and intended to clear the mortgage over the next four years. They had no other recorded debts and held savings of approximately £41,000.

In addition to his BSPS pension, Mr C had two small pensions valued at a total of around £15,500. One of these was with his current employer, to which he was still contributing.

PSW noted that Mr C was applying to move job back to his former employer, through which he'd accrued the BSPS benefits. Mr C has confirmed he re-joined that employer shortly after this first discussion. And he began paying into a new defined contribution ('DC') pension through that employer.

PSW said Mr C hoped to phase his retirement from age 55, reducing his work pattern to around one day per month from which he expected to receive an income of around £6,000 per year. He and Mrs C expected to need an income of £18,000 per year in retirement and didn't expect to take a tax-free lump sum. PSW said Mr C was concerned by the prospect of his benefits moving to the PPF and his objectives were around having control over his pension, flexibility and inheritability.

PSW also carried out an assessment of Mr C's attitude to risk, which it deemed to be 'cautious' or three on a scale of one to ten, with one being lowest risk and ten highest.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. Updated transfer valuations were provided by the BSPS trustees to qualifying members in September 2017. And in October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

On 1 December 2017, PSW advised Mr C to transfer the full cash equivalent transfer value ('CETV') of his BSPS pension benefits (£457,170.44) into a SIPP with a named provider. The suitability report said the reasons for this recommendation were that it gave Mr C control and flexibility in order to meet his income needs and provided access to lump-sum death benefits. PSW also recommended that he take ongoing advice from it on his pension, at a further cost.

Mr C complained in 2022 to PSW about the suitability of the transfer advice. PSW didn't uphold Mr C's complaint. It said it believed the advice was suitable based on Mr C's objectives. And it said that an independent review, by a third party, had also found the advice to be suitable.

Mr C referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into it and said it should be upheld and that CST should compensate Mr C for any losses caused by the unsuitable advice. He felt Mr C was unlikely to improve on the benefits that he could've taken via the scheme at retirement by transferring. And he thought Mr C could've achieved his income objective from 55 by remaining in the scheme, if this had been a genuine objective. But the Investigator thought, given Mr C had a number of years before he could retire, his retirement plans were unlikely to be finalised or any more than aspirational. So, overall, he didn't think there were any other reasons that meant transferring was in Mr C's best interests.

PSW disagreed. It acknowledged that Mr C could've potentially met his income needs from age 55 using the BSPS2 benefits and the part time salary he thought he'd obtain. But this would've left him little additional discretional income. Whereas by transferring he had flexibility to take more income in the early years of retirement, which it considered to be sustainable. PSW questioned the consideration of discount rates when looking at whether Mr C would be worse off. And it repeated that its advice had been reviewed by a third party, which had agreed it was suitable.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of PSW's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, PSW should have only considered recommending a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests. The regulator's position on this has been consistently reflected in the rules around DB transfers for a significant period of time. PSW has argued that this is guidance rather than a rule. But again, under COBS 2.1.1R, a rule, PSW was required to ensure it acted in accordance with Mr C's best interests. And having looked at all the evidence available, I'm not satisfied a transfer was in his best interests. I'll explain why.

PSW was required, by the regulator, to produce a transfer value analysis ('TVAS'). This included calculating critical yields which showed how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme.

PSW says it had instructed a TVAS which would've considered the benefits Mr C would've been entitled to through the BSPS2. But this wasn't available at the time of the advice. So, it referred in the suitability report to a separate analysis, which looked at the benefits that were due under the BSPS – even though remaining in the BSPS as it was, wasn't an option for Mr C. Nevertheless, both of the TVAS reports have been provided to our service.

To match the full annual pension Mr C could've taken at age 65, the normal scheme retirement age, under the BSPS the critical yield was 7.25%. To match the pension he'd have been entitled to under the BSPS2 at 65 the critical yield was said to be 5.1%. Or to match the full pension the PPF would've provided the critical yield was said to be either 4% or 4.16% (as the two TVAS reports returned different figures).

For drawing benefits from age 55, which PSW says Mr C hoped to do, the critical yields to match the full annual pension Mr C could draw at that point were 14.92% in respect of the BSPS benefits, 7.4% for the pension payable under the BSPS2 and either 6.11% or 6.6% for the PPF.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. PSW has said it was not required to consider these discount rates. But the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so, while PSW was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. And PSW was free to consider it. The relevant discount rates at the time was 4.4% for 17 years to retirement – relevant if Mr C retired at age 65 – and 3.4% for 7 years to retirement – relevant if he retired at 55.

There would be little point in Mr C giving up the guarantees available to him through his DB scheme and taking on the associated risks only to achieve, at best, the same level of benefits outside the scheme. And by transferring Mr C would have to pay annual fees and charges for the personal pension, which would reduce any gains the funds made. And those are not charges he would have had to pay if he didn't transfer.

PSW said in the suitability report that the pension provider it had recommended used estimated growth rates of 1% for low growth, 2% for medium growth and 5% for high growth, for the funds Mr C would be investing in. And so, it said that the critical yields to match the benefits the BSPS would've provided were unlikely to be achieved. But given these rates from the recommended provider, Mr C's 'cautious' attitude to risk, the discount rates and considering the regulator's standard projection rates at the time of 2%, 5% and 8% for low medium and high rate returns respectively, I think achieving growth comparable to most of the critical yields quoted was unlikely. And so, he was always unlikely to improve on the benefits he'd have received under the BSPS2 or the PPF at the normal retirement age, by transferring. And if he had retired early, I think Mr C was likely to receive benefits of lower value than he'd have been entitled to under the BSPS2 or the PPF.

PSW has said that its cash flow models indicated Mr C could draw a sustainable pension throughout his retirement. But one of the assumptions used in these models was an expected growth rate of 4.5% net of charges. And given the annual fund charges and servicing fee from PSW totalling 1.72%, he'd have needed to achieve regular growth of 6.22% for this 'model' to play out. Which I don't think was likely, for largely the reasons I've said. PSW has also said that the TVAS reports indicated that if growth of only 2% was achieved, Mr C could draw equivalent benefits to the BSPS2 beyond his life expectancy to age 86. But, as I've already said, there was little point in Mr C giving up his guaranteed benefits by transferring simply to tread water and only achieve the same level of benefits outside the scheme. And even if he had stuck to taking this level of benefits via drawdown, had he lived longer, or his investments performed poorly, there was still the prospect he might run out of money in the SIPP.

PSW says that Mr C wanted to change his working pattern from age 55, reducing his hours, and draw pension benefits from his pension to achieve the level of income he expected to need. It said he and Mrs C expected to need a combined £18,000 after tax (£21,650 gross) in retirement. And an income of £24,000 after tax would allow them to live "very comfortably" although PSW went on to say Mr and Mrs C had confirmed this was not essential.

Mr C could've taken benefits under the BSPS2 or the PPF from age 55. It is true that these would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited until his normal retirement age. This reduction was not a penalty.

The TVAS report said that under the BSPS2, Mr C could take an annual pension at age 55 starting at £15,123 per year (although I note that the review of the advice by the third party, which PSW instructed, indicated that the "time to choose" pack sent to Mr C said that the pension available at age 55 would in fact be £16,320.38). This amount would escalate while in payment. This was less than the amount Mr and Mrs C expected to need annually.

But PSW recorded that Mr C intended to continue working and expected to receive an income of £6,000 per year. Mrs C was also working and receiving a salary. They held savings of £41,000. And given they were overpaying their mortgage, which would result in it being cleared in 4 years and their outgoings reducing – several years before Mr C retired – it was reasonable to think that their savings amount could've increased before he began phased retirement. Mr C also held pension benefits in two other schemes. And, by the time PSW gave advice, he'd moved job, back to his former employer, and was contributing to another pension scheme with it. And it is reasonable to expect he'd have continued to build pension benefits, either through this scheme or with another employer if he moved roles again, until he retired. Mrs C also held some pension benefits. And, both Mr and Mrs C would later be entitled to state pension benefits. So, it appears that they could've met their income need, by remaining in the DB scheme. And PSW acknowledged this in response to the Investigator's opinion.

So, Mr C had no need to transfer in order to be able to meet his needs. But by doing so he was exposing his pension fund to the volatilities of the investment markets. So, he was putting his otherwise safeguarded DB scheme pension income at unnecessary risk. I don't think that was in his best interests, particularly given his cautious attitude to risk.

And, in any event, Mr C was only 47 at the time of the advice. His circumstances, objectives or aims could've changed over the years that followed. Indeed, he has told our service that he no longer intends to reduce his working hours to the extent he originally thought he might. So, I don't think his plans were set in stone. I don't doubt that Mr C likely indicated in discussion with PSW that he aspired to retire early. I think, when asked, most people would say they would like to do so. But, for the majority, early retirement means a significant drop in income. So, when it had come to it, he may've felt differently or opted not to retire early. Overall, I think it was too soon for Mr C to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BSPS2, which as I've said would've allowed him to meet his expected needs. And because by joining it he would retain the option to transfer out at a later date if his circumstances required it.

PSW said Mr C was interested in the lump sum death benefits of a personal pension. But Mr C was relatively young and in good health, so there was no reason to believe he wouldn't be reliant on his pension to meet his own needs in retirement. And while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. It would be subject to market risks and fluctuations and would be reduced by any income Mr C took during his lifetime, which given PSW's advice was based on him drawing sums from age 55 at a level in excess of the benefits offered by the DB scheme, were likely to result in it being reduced. So, the pension may not have provided the legacy Mr C might've thought it would. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

If Mr C was genuinely concerned about leaving a legacy for his family, PSW ought to have considered insurance. I appreciate life insurance can be expensive. So, the starting point ought to have been for PSW to ask Mr C how much he would ideally like to leave, and it could've been explored on a whole of life or term assurance basis, the latter being likely to be a lot cheaper to provide. And, given his income exceeded his outgoings, insurance was likely affordable for Mr C.

So, I don't think different death benefits available through a transfer meant it was in Mr C's best interests. And ultimately PSW should not have encouraged Mr C to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

I don't doubt that Mr C was likely to have been concerned by the consultation that had been ongoing around the DB scheme. Or that he might've had some negative feelings about how the sponsoring employer had handled matters and might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But I don't think, based on what I've seen, that he was committed to that course of action. And PSW's role was to give impartial, objective advice.

Mr C had applied and intended to return to working for that employer. He began paying into a new pension scheme with it when he took up his new role – before transferring his BSPS benefits. And the employer and DB scheme were not one and the same. I don't think these things support that he had lost faith to the extent that he'd have always moved the pension.

Mr C may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative. Which was expected to provide better benefits than the PPF and still provide Mr C the option to transfer closer to retirement. But even if this hadn't happened, the PPF still provided Mr C with guaranteed income and the option of accessing his benefits early. Mr C was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

And I can't see that Mr C had any investment experience or an interest in or the knowledge to be able to manage his pension funds on his own. Indeed, the recommendation to transfer was on the understanding he would take ongoing advice about how his pension was invested from PSW, at a further cost. So, I think that having control over his pension was simply a consequence of transferring away from his DB scheme.

PSW has said that the advice was reviewed by a third party using the Defined Benefit Advice Assessment tool ('DBAAT') which was developed by the FCA as an aid to help in assessing the suitability of DB transfer advice . I am satisfied I have already considered the suitability of the advice as a whole and explained why I don't think it was in Mr C's best interests. But I've also considered the review PSW has referred to. Having carefully considered the answers the reviewer gave to the questions the tool asked, there are some I disagree with which I think could have led to a different result.

For example, in the section titled 'Examples of unsuitability' the reviewer answered "No" to the following examples:

2) The aim of the transfer is to maximise death benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.
3) The aim of the transfer is to access flexible benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.
6) The client wants to retire early but can meet their objective(s) while remaining in the scheme.
9) The firm's transfer analysis does not support a recommendation to transfer.

As I've already explained I'm satisfied Mr C could've taken retirement benefits at age 55 and met his income needs while remaining in the DB scheme, if this was a genuine objective. Which PSW acknowledged in response to the Investigator's opinion. And he could've taken life cover to provide a legacy to his family if this was a genuine objective.

I don't think transferring out of the DB scheme to maximise death benefits or to obtain flexibility was in Mr C's best interests or suitable for him. And I've also explained, the TVAS indicated that Mr C was unlikely to be able to achieve the growth required to match the benefits being given up. Something which PSW again acknowledged in the advice.

So, taking all of this into account, while I've had regard for the output of the DBAAT I don't think this demonstrates that the advice given to Mr C here was suitable for him.

Overall, I can't see persuasive reasons why it was clearly in Mr C's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr C would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr C received from PSW was unsuitable for him.

While Mr C indicated to PSW he would like to begin phased retirement and potentially take benefits from the pension early, his circumstances could've changed, and I don't think his plans were finalised. By opting into the BSPS2, Mr C would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2 than from the PPF. So, had he received suitable advice not to transfer, I think Mr C would've opted into the BSPS2. And I think PSW should compensate him on this basis.

Putting things right

A fair and reasonable outcome would be for PSW to put Mr C**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would have most likely remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

PSW must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

PSW should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what PSW based the inputs into the calculator on.

For clarity, Mr C has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, PSW should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts PSW's offer to calculate how much of his redress could be

augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, PSW may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Punter Southall Wealth Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Punter Southall Wealth Limited pays Mr C the balance.

If Mr C accepts this decision, the money award becomes binding on Punter Southall Wealth Limited.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 December 2023.

Ben Stoker
Ombudsman